In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 305

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, PETITIONER

v.

BENNET F. SCHAUFFLER, INDIVIDUALLY AND AS REGIONAL DIRECTOR FOR THE FIFTH REGION, NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE OFFICERS OF THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

This case involves an attempt to enjoin a hearing by the National Labor Relations Board.[1] It is similar to the numerous cases which this Court declined to review in the October 1936 term, and presents no issue not presented in those cases. *Bradley Lumber Co.* v. *National Labor Relations*

[1] The petition for certiorari contains a prayer for the granting of a temporary injunction by one of the justices of this Court (Pet. 9). An application for a temporary injunction was made by petitioner to Mr. Justice Butler and was denied on August 12, 1937.

Board, No. 153, certiorari denied October 12, 1936; *Heller Bros. Co.* v. *Lind,* and six other cases, Nos. 704–710, certiorari denied March 15, 1937; *Hatfield Wire & Cable Co.* v. *Herrick,* No. 744, certiorari denied March 15, 1937; *Marathon Electric Manufacturing Co.* v. *Clark,* No. 752, certiorari denied April 5, 1937; *El Paso Electric Co.* v. *Elliott,* No. 1017, certiorari denied June 1, 1937.

The petition calls attention to the conflict between the decision below and the decision of the Circuit Court of Appeals for the First Circuit in *A. Howard Myers* v. *Bethlehem Shipbuilding Corp.,* 88 F. (2d) 154, rehearing denied 89 F. (2d) 1000, petition for certiorari pending, Nos. 181, 182. It should be pointed out that at the time when a review was sought in the first case of this character (*Bradley Lumber Co.* v. *National Labor Relations Board,* No. 153, *supra*) a conflict existed between that decision and a decision of the Circuit Court of Appeals for the Eighth Circuit. This conflict was called to the attention of the Court (see supplemental memorandum for the National Labor Relations Board in No. 153, October Term, 1936), and the Court nevertheless denied certiorari. Moreover, if the decision of the First Circuit in the *Myers* case should be affirmed by this Court, the result would be a holding that the granting of an injunction against a hearing by the Labor Relations Board is a matter of discretion with the district court. In the case at bar the discretion of the

district court has already been resolved against petitioner, since the district court specifically held that the allegations of the bill and the affidavits did not establish a case of irreparable injury such as would justify the issuing of an injunction (R. 71).

No questions worthy of review are presented herein. The petition should be denied.

Respectfully submitted.

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SEPTEMBER 1937.

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